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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,486	03/22/2004	Reza Kassayan	63519.00002	2774

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EXAMINER

ROANE, AARON F

ART UNIT

PAPER NUMBER

3739

MAIL DATE

DELIVERY MODE

07/10/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/806,486

**Applicant(s)**

KASSAYAN, REZA

**Examiner**

AARON ROANE

**Art Unit**

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 10 March 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-29 and 34-47 is/are pending in the application.
- 4a) Of the above claim(s) 5, 9, 12-17, 30-33, 35, 39 and 42-47 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 6-8, 10, 11, 18-29, 34, 36-38, 40 and 41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 22 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☒ Notice of Draftperson's Patent Drawing Review (PTO-848)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 11/14/2007.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Amendment***

The supplemental amendment filed 3/10/2008 has been considered by the examiner and will be entered.

### ***Election/Restrictions***

Applicant's election of Group I, (claims 1-11,18-29 and 34-41), specie #2 (perpendicular), subspecie A (in phase) and subspecies II (Figure 3CD) in the reply filed on 3/5/2008 (and 3/10/2008) is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

Claims 5, 9, 12-17, 30-33, 35, 39 and 42-47 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected group, specie, subspecie and subspecies, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 3/5/2008 (and 3/10/2008).

The examiner will examine and search claims 1-4, 6-8, 10, 11, 18-29, 34, 36-38, 40 and 41.

***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-4, 6-8, 10, 11, 18-29, 34, 36-38, 40 and 41 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-20 and 25 of copending Application No. 10/856,186. Although the conflicting claims are not identical, they are not patentably distinct from each other because they encompass essentially the same invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Objections***

Claims 1-4, 6-8, 10, 11, 18-29, 34, 36-38, 40 and 41 are objected to because of the following informalities: The independent claims recite first and second currents but fail to recite the source. In order to provide an examination the examiner will interpret any claim language regarding currents and current parameters as intended use. Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-4, 6-8, 10, 11, 18-29, 34, 36-38, 40 and 41 are rejected under 35 U.S.C. 102(b) as being anticipated by vanHooydonk (USPN 5,902,251).

Regarding claims 1, 8, 10, 11, 18, 34, 38 and 40, vanHooydonk discloses a probe (16 and any alternate/equivalent counterparts in other embodiments) for generating an electromagnetic field, comprising: a first conductor (one of the coaxial cables of one of the antennas of figures 10 and 11, see col. 7-8 and 14-

16) for receiving a first current signal having a frequency; a second conductor (a second of the coaxial cables of a second of the antennas of figures 10 and 11, see col. 7-8 and 14-16) for receiving a second current signal having a frequency; a first radiation coil (one of 18 of figures 10 and 11, see col. 7-8 and 14-16) coupled to the first conductor for radiating a first electromagnetic field based on the first current signal; and a second radiation coil (a second of 18 of figures 10 and 11, see col. 7-8 and 14-16) coupled to the second conductor for radiating a second electromagnetic field based on the second current signal, the first and second electromagnetic fields causing an interferential electromagnetic field pattern, wherein the frequency of the second current signal is equal to, or a substantially perfect multiple of, the frequency of the first current signal and/or the first current signal and the second current signal are in phase or out of phase, see col. 6-9 and 14-16 and figures 1-12B.

Regarding claims 2-4, vanHooydonk discloses the claimed invention, wherein the grounding is inherent given the generator/power source, see col. 6-9 and 14-16 and figures 1-12B.

Regarding claims 6 and 36, vanHooydonk further discloses the first radiation coil and the second radiation coil are in perpendicular planes, see figures 10 and 11.

Regarding claims 7 and 37, vanHooydonk further discloses the probe has a diameter of about 7mm, see col. 6-16 and figures 1-12B.

Regarding claims 19-26, vanHooydonk discloses the claimed invention, see col. 6-16 and figures 1, 2, 9A, 9B and 10.

Regarding claim 27, vanHooydonk discloses the claimed invention, see claim 17.

Regarding claims 28, 29 and 41, vanHooydonk discloses the claimed invention. The conductors of vanHooydonk are perfectly capable of performing the recited intended use.

### ***Response to Arguments***

Applicant's arguments with respect to claims 1-4, 6-8, 10, 11, 18-29, 34, 36-38, 40 and 41 have been considered but are moot in view of the new ground(s) of rejection.

**Due to the new grounds of rejection this action is NON FINAL.**

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to AARON ROANE whose telephone number is (571)272-4771. The examiner can normally be reached on Monday-Friday 5:30AM-3PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/AARON ROANE/  
Examiner, Art Unit 3739

/Roy D. Gibson/  
Primary Examiner, Art Unit 3739